



1 Appellant Reaugh Ranchards, Inc appeared through its President Dan Reaugh and through  
2 James Porter George Merker and James Turner, Attorneys at Law from Seattle and Bellevue  
3 Washington Respondent appeared through Charles Douthwaite, Assistant Attorney General  
4 Reporters Duane Lodell and Bibi Carter reported the proceedings in Lacey and Ruby Winters  
5 reported the proceedings in Yakima

6 Having heard or read testimony, having examined the exhibits, having considered the arguments  
7 of counsel and having reviewed the proposed findings and conclusions submitted by counsel the  
8 Board now makes these

#### 9 FINDINGS OF FACT

##### 10 I

11 Appellant Reaugh Ranchards, Inc (RRI) owns about 1270 acres of land situated within  
12 Sections 10 15, 16, 17 20, 21 and 22 of T 28 N R 22 E W M , in Chelan County, Washington  
13 The property lies within three drainage basins known as Cooper Gulch, Swanson Gulch and  
14 Rattlesnake Canyon and is located 9 miles north of Chelan, 9 miles east of Manson, and borders on  
15 the east boundaries of the Lake Chelan Reclamation District RRI acquired the land between 1945  
16 and 1977 as a part of the Reaugh family apple and cattle operations RRI has sold some of its  
17 orchard lands

18 RRI is now attempting to develop, as necessary, and to sell most of its land in order to  
19 divide the family estate and to provide family members with a retirement income Appellant asserts  
20 its potential use for agricultural, recreational, and residential purposes Appellant generally  
21 contemplates these three uses, depending upon the demands and desires of the purchasers

##### 22 II

23 Appellant submitted several applications to withdraw public ground waters to the Department  
24 of Ecology (DOE) between October 6, 1980 and November 7, 1980 Eight of these applications, later  
25 appealed were assigned by the DOE Application Nos G4-27156, G4-27157 G4-27158 G4-27159  
26 G4-27160 G4-27161, G4-27162 and G4-27164

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW & ORDER  
SHB NO. 82-206, et. al.

1 Prior to application RRI began ground water explorations by drilling several wells The  
2 applications to appropriate groundwater were filed with the respondent DOE as follows

3	DOE APP #	RRI WELL #	PRIORITY DATES	QUANTITY REQUESTED	INTENDED USE
4	G4-27156	1A	10-16-80	450 GPM	Irrigation & Domestic Supply
5	G4-27161	4	10-06-80	50 GPM	"
6	G4-27157	10	10-14-80	200 GPM	"
7	G4-27162	11A	10-06-80	200 GPM	"
8	G4-27164	11B	11-07-80	875 GPM	"
9	G4-27158	13	10-06-80	875 GPM	"
10	G4-27159	14	10-10-80	300 GPM	"
11	G4-27160	16	10-14-80	200 GPM	"

12 Protests were received concerning all eight of the applications after proper notice was published.

13 The DOE's field examinations occurred in February and May of 1982 The DOE staff revisited  
14 the site several times also after these appeals had been filed

### 15 III

16 As appellant reviewed its data on well capacities the quantity of water applied for was  
17 reduced to conform to RRI's belief about probable capacity of each well

18	DOE APP #	RRI WELL #	AMENDED REQUEST	INTENDED USE
19	G4-17156	1A	150 GPM	Irrigation & Domestic Supply
20	G4-27161	4	20 GPM	"
21	G4-27157	10	40 GPM	"
22	G4-27162	11A	20 GPM	"
23	G4-27164	11B	60 GPM	"

24  
25  
26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
SHB No. 82-206, et. al.

1	G4-27164	13	100- GPM or yield of well (all granite)	'
2				
3	G4 27159	14	150- GPM or yield of well (all granite)	"
4				
5	G4-27160	16	50 GPM or yield of well (all granite)	"
6				

#### IV

8 In making an investigation and evaluation for recommendations on permitted water withdrawals  
9 respondent agency checked data on groundwater geology, topography, climate, water duty  
10 experiences of nearby water users, and on the existence of certificated water rights and permits  
11 for appropriation which might limit or be impacted by new withdrawals While the evaluations made  
12 are not error-free they are reasonable and supportable

13 Appellant RRI disagreed with most data relied upon and facts ascertained by DOE depending  
14 instead on recollections of the Reaugh family, outside experts, isohyetal precipitation maps, and  
15 other sources of data for the findings which underpin their argument for the appropriation of  
16 additional water

17 The data and information DOE gathered was presented in Report of Examination findings and  
18 in testimony by deposition and at hearing A range of available groundwater in each of the three  
19 drainages was ultimately set forth as acre feet available annually for sustained long-term  
20 withdrawal using water budget calculations From this the accumulation of existing rights and  
21 permits was subtracted and a reasonable amount of acre feet for requested domestic uses by RRI  
22 was recommended for appropriation under terms of a permit

#### V

24 No irrigation water was recommended for permit since DOF found the limited water available  
25 could not support both the domestic uses and the seasonal irrigation Domestic uses have a less  
26 severe impact on a watershed than irrigation uses since domestic water is rather easily returned to

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW & ORDER  
SHB No 82-206, et. al.

1 the ground through on-site sewage disposal systems Appellant did not inform DOE of specific crops  
2 he intended for planting or when and if a water distribution system or electricity supply would be  
3 put in place to serve both agricultural and domestic uses for each well The applications lacking  
4 very specific plans for the future around which a permit could be fashioned placed the respondent  
5 in a position of acknowledging the overall importance of domestic uses amongst all beneficial uses  
6 of water applied for where water is limited Appellant, in fact, established that demand for  
7 domestic water is highly likely to occur in the future

8 The details respondent was given on the applications were the particulars of already  
9 constructed wells and the various changes--both increases and decreases--in instantaneous  
10 withdrawals desired Some information was given on general acreages to be irrigated, and homes to  
11 be served This information kept changing At hearing on appeal some applications were requested  
12 to be amended again at least twice, leaving the record unclear on appellant's actual plans and  
13 interests in many instances

#### 14 VI

15 The respondent DOE made findings, conclusions, and recommendations on the eight  
16 applications, which are here summarized

17	<u>DOE APP #</u>	<u>RRI WELL #</u>	<u>QUANTITY</u>	<u>AUTHORIZED USE</u>
18	G4-27156	1A	150 gpm, total of 50 af/year	50 homes, no irrigation
19	G4-27161	4	15 gpm, total of 4 af/year	4 homes, no irrigation
20				
21	G4-27157	10 )	170 gpm, total	17 homes, no irrigation
22		)	of 17 af/year	
23	G4-27162	11A )		
24	G4-27164	11B )		
25	G4-27158	13 )		
26	G4-27159	14	Denial of any use whatsoever	

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW & ORDER  
SHB No. 82-206, et. al.

G4-27160	16	50 gpm, total of 8 af/year	8 homes, no irrigation
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RRI appealed the denial of irrigation uses on each application and the denial of any uses under application G4 27159

## VII

## Application G4-27156

Cooper Gulch has a total area of approximately 3,943 acres. The elevation of Cooper Gulch varies from 2000 feet to 4324 feet above mean sea level. Only some 1260 acres lie above Well 1A, the point of withdrawal proposed for Application G4-27156, and could possibly contribute water to that well. There are several close-by wells. The estimated long-term average incident precipitation in Cooper Gulch is 13 inches per year. Between 85 to 90 percent of this precipitation will be lost to runoff or evapo-transpiration because of the slope, soil type, vegetation and condition of the ground and bedrock formation. The remaining 10 to 15 percent of this precipitation percolates underground and flows at shallow depths atop granitic bedrock. Only 50 percent of the precipitation which percolates to the water table can be withdrawn for irrigation. The area's irrigation season is six months of each year. In sum, between 68 and 102 acre-feet of water are physically available for withdrawal on a sustained, long-term basis, at the site of the well covered by Application G4-27156.

DOE authorized the appellant to withdraw 50 acre-feet per year from that well for community domestic supply to the appellant's proposed 50 homes. There is not sufficient water for appellant's proposed irrigation of 75 acres under this application.

## Application G4 27161

Appellant's well #4 one-half mile downdrainage from Well 1A and which is covered by Application G4 27161, produces only 10 to 15 gpm of water. Appellant had reduced its requested appropriation to 15 gpm by the time DOE issued the Report of Exam and Order appealed here. Said Report and Order authorized withdrawal of 15 gpm for domestic use.

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW & ORDER  
SHB No. 82-206, et. al.

1 Approximately 213 to 320 acre-feet of water are available annually for sustained long-term  
2 withdrawal in all of Cooper Gulch, using the water budget method Of that total, 143 6 acre-feet  
3 have been allocated to currently existing uses Appellant's Applications G4-27156 and G4-27161  
4 represent allocations of an additional 54 acre-feet Clearly, more than one-half of the available  
5 water has been spoken for

6 Applications G4-27157, G4-27158, G4-27162, and G4-27164

7 The appellant submitted four applications which were consolidated for processing by DOE  
8 These applications all pertain to Swanson Gulch The applications in numerical order are G4-27157  
9 G4-27158, G4-27162, and G4-27164

10 The place of use under Application G4-27157, G4-27158, G4-27162, and G4-27164 is identical  
11 and is in Swanson Gulch All the proposed points of withdrawal are located in that gulch DOE  
12 approved all four applications for a total, between the four wells, of 170 gpm, 17 acre-feet per  
13 year for continuous community domestic supply for 17 homes The appellant's requests for  
14 irrigation water were denied

15 The water requirement for irrigation, generally, in the Swanson/Cooper Gulch area is 3 5  
16 acre-feet of water per year per acre irrigated This requirement can vary according to the type of  
17 crop irrigated Appellant did not specify for DOE what crops it planned to irrigate The  
18 neighboring Lake Chelan Reclamation District provides 3 0 acre-feet per year to its customers

19 The water requirement for each home served is 1 acre-foot per year

20 Swanson Gulch has a total area of approximately 2416 acres The elevation of Swanson Gulch  
21 varies from 1800 feet to 3949 feet above mean sea level The estimated long-term average incident  
22 precipitation in Swanson Gulch is 13 inches per year Only 10 to 15 percent of this precipitation  
23 percolates to the ground water table and is available for withdrawal due to slope, soil type,  
24 vegetation and condition of the ground Only 50 percent of the precipitation which percolates to  
25 the ground water table can be withdrawn on a sustained basis Therefore, between 131 and 196  
26

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW & ORDER  
SHB No. 82-206, et. al.

1 acre feet of water are available for withdrawal on a sustained, long-term basis spread out within  
2 Swanson Gulch

3 Application G4-27160

4 This application was a request for a permit authorizing the withdrawal of 300 gpm of water  
5 for domestic use to supply 10 homes and for irrigation of 50 acres The request was later reduced  
6 to 50 gpm for domestic supply to 8 homes and to irrigate a maximum of 20 acres

7 Appellant's well # 16 which is covered by Application G4-27160 produces only about 50 gpm of  
8 water This amount is not sufficient for all uses proposed by appellant. DOE thus approved this  
9 application for only four acre-feet for the domestic uses requested by the appellant The irrigation  
10 use requested was denied on the basis of inadequate production by the well

11 Approximately 131 to 196 acre-feet of water are available annually for sustained long-term  
12 withdrawal in Swanson Gulch using the water budget method Of that total, 153.5 acre-feet have  
13 been allocated to currently existing uses

14 Appellant's Applications G4-27157, G4-27158 G4-27160 G4-27162, and G4-27164 represent  
15 allocations of an additional 21 acre-feet

16 Application G4-27159

17 This application, when filed, requested 300 gpm for irrigation of 100 acres and continuous  
18 domestic supply for up to 10 homes This request was changed before and during the hearing The  
19 last statement by appellant was a request for 100 gpm for 20 acres of irrigation

20 Rattlesnake Canyon has a total area of approximately 760 acres The estimated long-term  
21 average incident precipitation in Rattlesnake Canyon is also 13 inches per year Approximately 123  
22 acre feet of water are physically available for withdrawal on a sustained long term basis  
23 Approximately 50 percent of this sum is reasonably available for irrigation

24 The maximum total water usage potential under existing rights in Rattlesnake Canyon is 114  
25 acre-feet per year There is not sufficient additional water available to service appellant's 100  
26 acres of irrigation as proposed under Application G4-27159

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW & ORDER  
SFB No. 82-206, et. al.



Application G4-27159 was denied altogether by DOE

## VII

From these several use limitations and denials of permit applications appellant RRI appealed to this Board on December 30, 1982 and on April 4, 1983

## VIII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such  
From these Findings the Board comes to the following

## CONCLUSIONS OF LAW

### I

Applications for permit to withdraw public ground water must be made in accordance with RCW 90 03 250 through RCW 90 03 340 RCW 90 44 060

### II

Appeals to DOE permit decisions properly come before this Board with appellants bearing the burden of proof RCW 43 21B

### III

The Water Code, in RCW 90 03 290, provides that permits such as those appellant applied for shall issue " if there is water available for appropriation " There is not sufficient water available in Cooper Gulch, Swanson Gulch or Rattlesnake Canyon after the waters already appropriated are subtracted from the total quantity of water available for withdrawal, to satisfy appellant's requested appropriations in their entirety

Appellant's requests for water for irrigation were correctly denied by DOE because water was not available under the following applications G4-27156, G4-27157, G4-27158, G4-27159, G4-27160, G4-27161, G4-27162 and G4-27164

### IV

DOE correctly approved these applications in the full amount of water requested for withdrawal for domestic use G4-27156, G4-27161, and G4-27160. Applications G4-27157, G4-27158,

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW & ORDER  
SHB No. 82-206, et. al.

1 G4-27162 and G4-27164 were also correctly approved for the quantity requested by the appellant  
2 for domestic use. The appellant, by failing to identify one particular domestic development  
3 permitted DOE to consider its request to be limited to the smaller development. The appellant  
4 further placed DOE in position to deny its request for any domestic use under Application G4 27159  
5 by failing to firmly identify its plans for development.

#### 6 V

7 DOE is statutorily permitted to approve applications for permit in less than the amount of  
8 water applied for. See RCW 90.03.290 which provides, in part,

9 Any application may be approved for less amount of water than applied for,  
10 if there exists substantial reason therefore.

11 DOE correctly approved appellant's several applications only for the domestic use requested. The  
12 appellant established that considerable development of domestic uses is likely to occur in Cooper  
13 Gulch and Swanson Gulch in the near future. Domestic uses have a far less severe impact on a  
14 watershed than irrigation uses. The limited water shows its impact in this area.

15 It is detrimental to the public interest to approve irrigation developments which request all  
16 the water available in an area where development of domestic uses is as likely to occur as it is  
17 here. Further, DOE did not act unlawfully or outside its jurisdiction by treating Cooper Gulch and  
18 Swanson Gulch as areas of limited availability because over one-half the available water has been  
19 appropriated. There are "substantial reasons" for limiting appellant to its request for  
20 domestic uses.

#### 21 VI

22 Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.  
23 From these Conclusions the Board enters this

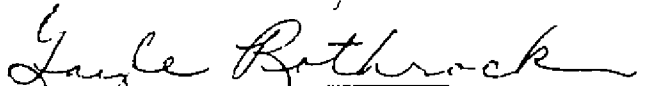
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26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
SHB No. 82-206, et. al.

ORDER

The Department of Ecology's Orders under Applications G4-27156, G4-27157, G4-27158  
G4-27159, G4-27160, G4-27161, G4-27162, and G4-27164 are affirmed

DATED this 13<sup>th</sup> day of June, 1984

POLLUTION CONTROL HEARINGS BOARD

  
GAYLE ROTHROCK, Chairman

(See Attached Statement)  
DAVID AKANA, Lawyer Member


(See Dissenting Opinion)  
LAWRENCE J FAULK, Vice Chairman

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW & ORDER  
SHB No. 82-206, et. al.

1 STATEMENT:

2  
3 Although I have personally heard the evidence in this matter,  
4 I have not participated in the results reached by the other members  
5 because of a potential appearance of fairness situation which arose  
6 after the hearing was closed.

7 I therefore abstain.

8  
9   
10 DAVID AKANA, Lawyer Member

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26 STATEMENT  
PCHB Nos. 82-206, et al.  
27

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
REAUGH RANCHARDS, INC.,

Appellant,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB Nos. 82-206, 82-207,  
82-208, 82-209, 82-210,  
82-211, 82-212 & 83-27

Dissenting Opinion

This matter is consolidated appeals from findings and orders of the Department of Ecology approving in part and denying in part eight separate applications for a permit to withdraw public ground waters submitted on behalf of Reaugh Ranchards, Inc. This matter came on for hearing before the Pollution Control Hearings Board. Gayle Rothrock, Chairman, and David Akana, Lawyer Member sitting for the Board, convened in Yakima and Lacey, Washington. Lawrence J. Faulk, Vice Chairman, heard the matter in person and through review of tape-recorded transcripts of testimony. The hearing convened in

1 Yakima, Washington, on November 9, 1983, and ran through November 10,  
2 1983. The hearing was reconvened in Lacey, Washington, on January 23,  
3 1984, and continued through January 24, 1984. Respondent elected a  
4 formal hearing pursuant to RCW 43.21B.230.

5 Appellant Reaugh Ranchards, Inc. appeared through its President  
6 Dan Reaugh and through James Porter, George Merker, and James Turner,  
7 Attorneys at Law from Seattle and Bellevue, Washington. Respondent  
8 appeared through Charles Douthwaite, Assistant Attorney General.  
9 Reporters Lois Anderson and Ruby Winters recorded the proceedings in  
10 Yakima. Reporters Duane Lodell and Bibi Carter reported the  
11 proceedings in Lacey.

12 Having heard or read testimony, having examined the exhibits,  
13 having considered the arguments of counsel, and having reviewed the  
14 proposed findings and conclusions submitted by counsel, the Board now  
15 makes these

#### 16 FINDINGS OF FACT

##### 17 I

18 Appellant is a Washington corporation which has owned land north  
19 of Chelan and east of Manson in an area known as Cooper Gulch, Sanson  
20 Gulch, and Rattlesnake Canyon, since 1945. Appellant operates a  
21 family apple orchard and cattle ranch. Appellant submitted nine  
22 applications for a permit to withdraw a public ground waters to the  
23 Department of Ecology (DOE) between October 6, 1980, and November 7,  
24 1980. The nine applications were assigned by DOE Application Nos.  
25 G4-27156, G4-27157, G4-27158, G4-27159, G4-27160, G4-27161, G4,27162,

26 DISSENTING OPINION  
27 PCHB Nos. 82-206, et al.

1 G4-27163 and G4-27164. Application G4-27163 has not been appealed.

2 The DOE's field examination occurred in February and May of 1981  
3 and May of 1982. The Department staff revisited the site several  
4 times after these appeals had been filed also.

5 II

6 Application G4-27156 was received by DOE on October 16, 1980.  
7 This application requested that a permit be issued to authorize  
8 withdrawal of ground water from a well on Cooper Gulch. The use of  
9 water proposed was irrigation and domestic supply. The well has  
10 already been constructed. The location of the well is within the SW  
11 1/4 SE 1/4 of Section 10, Township 28 North, Range 22 East, Willamette  
12 Meridan.

13 The appellant originally requested 450 gallons per minute (gpm) of  
14 water for a continuous domestic supply for up to 50 homes and  
15 irrigation of 75 acres. This application was amended and final relief  
16 sought is for 150 gpm for continuous domestic supply for up to 50  
17 homes and irrigation of 75 acres (RRI's post hearing memo). The DOE  
18 granted a water right upon this application for an annual quantity of  
19 50 acre-feet per year and an instantaneous quantity of 150 gpm. The  
20 use was continuous domestic supply for 50 homes. The request for  
21 water for irrigation on this application was denied.

22 III

23 The DOE received Application G4-27161 on October 6, 1980. This  
24 application requested water from a well which had been constructed in  
25 Cooper Gulch in the SE 1/4 NW 1/4 of Section 15, Township 28 North,

26 DISSENTING OPINION  
27 PCHB Nos. 82-206, et al.

1 Range 22 East, Willamette Meridian.

2 Application G4-27161 originally requested 50 gpm for irrigation of  
3 50 acres and continuous domestic supply for 50 homes. The application  
4 was amended and the final relief sought is for 20 gpm for continuous  
5 domestic supply for up zero homes and irrigation of zero acres (RRI's  
6 post hearing memo). The DOE granted a water right upon this  
7 application in the amount of 4 acre-feet per year and 15 gpm  
8 instantaneous supply to be used for continuous group domestic supply  
9 for 4 homes. The applicant's request for irrigation water was denied,  
10 and the applicant's request for domestic use was denied in part.

11 IV

12 Application G4-27160 was received by DOE on October 14, 1980.  
13 This application was a request for a permit authorizing the withdrawal  
14 of 300 gpm of water for domestic use to supply 10 homes and for  
15 irrigation of 50 acres. The application was amended and the final  
16 relief sought is for 50 gpm for domestic supply to service 8 homes and  
17 irrigation of a maximum of 20 acres.

18 The well is located in Swanson Gulch. It is a 6-inch diameter  
19 well and is 310 feet deep.

20 The DOE granted this application for water right in the amount of  
21 8 acre-feet per year and an instantaneous quantity of 50 gpm to  
22 service eight homes. The appellant's requested irrigation use was  
23 denied.

24 V

25 The appellant submitted 4 applications which were consolidated for



1 processing by DOE. These applications all pertain to Swanson Gulch.  
2 The applications in numerical order are G4-27157, G4-27158, G4-27162,  
3 and G4-27164.

4 Application G4-27157 was received by DOE on October 14, 1980.  
5 Application G4-27157 at that time requested 200 gpm of ground water  
6 for irrigation of 150 acres and for a domestic supply for up to 10  
7 homes. This request was amended and the final relief sought is for 40  
8 gpm for continuous domestic supply for up to zero homes and irrigation  
9 of zero acres (RRI's post hearing memo).

10 Application G4-27157 covers a well which has been constructed.  
11 This well is 6 inches in diameter and 129 feet deep. The well is  
12 located in the NW 1/4 SW 1/4 of Section 21, Township 28, Range 22  
13 East, Willamette Meridian.

14 Application G4-27158 was received by DOE on October 14, 1980.  
15 This application originally requested the right to withdraw public  
16 waters in the amount of 875 gpm for irrigation of 150 acres and  
17 domestic supply for up to 10 homes. This request was amended and the  
18 final relief sought is for 100 gpm for continuous domestic supply for  
19 zero homes and irrigation of zero acres (RRI's post hearing memo).

20 The source of water proposed for application G4-27158 is a well  
21 which as been constructed and which is 8 inches in diameter and 270  
22 feet deep. This well is located in the NE 1/4 of SE 1/4 of Section  
23 20, Township 28 North, Range 22 East, Willamette Meridian.

24 Application G4-27162 was received by DOE on October 6, 1980. This  
25 application, when filed, requested 200 gpm of public waters for the

1 irrigation of 150 acres and domestic supply for up to 10 homes. This  
2 request was amended and the final relief sought is for 20 gpm for  
3 continuous domestic supply for up to zero homes and irrigation of zero  
4 acres (RRI's post hearing memo).

5 The well which is to provide water on this application has been  
6 constructed. It is 6 inches in diameter and 162 feet deep, and is  
7 located in the NW 1/4 SW 1/4 of Section 21, Township 28 North, Range  
8 22 East, Willamette Meridian.

9 Application G4-27164 was received by DOE on November 7, 1980.  
10 This application, at that time, requested that a withdrawal of public  
11 waters be authorized in the quantity of 875 gpm for irrigation of 150  
12 acres and for domestic supply for up to 10 homes. This request was  
13 amended and the final relief sought is for 60 gpm for irrigation of up  
14 to 20 acres and supplemental domestic supply. (RRI's post hearing  
15 memo.)

16 The source of water to be withdrawn under Application G4-27164 is  
17 a well which has been constructed. That well is 8 inches in diameter,  
18 100 feet deep, located in the NW 1/4 SW 1/4 of Section 21, Township 28  
19 North, Range 22 East, Willamette Meridian.

20 The place of use under Applications G4-27157, G4-27158, G4-27162,  
21 and G4-27164 is identical and is in Swanson Gulch. All the proposed  
22 points of withdrawal are located in Swanson Gulch. The total  
23 requested under these four applications is for 220 gpm for continuous  
24 domestic supply irrigation. The DOE approved all four applications  
25 for a total, between the four wells, of 170 gpm, 17 acre-feet per

26 DISSENTING OPINION  
27 PCHB Nos. 82-206, et al.

1 year, for continuous community domestic supply for 17 homes. The  
2 appellant's requests for irrigation water were denied.

3 VI

4 The DOE received Application G4-27159 on October 14, 1980. The  
5 application, when filed, requested 300 gpm for irrigation of 100 acres  
6 and continuous domestic supply for up to 10 homes. This request was  
7 amended and the final relief sought is for 150 gpm for continuous  
8 domestic supply for up to zero homes and irrigation of 20 acres.  
9 (RRI's post hearing memo.)

10 The source of water proposed is a well which has already been  
11 constructed. This well 6 inches in diameter and 275 feet deep. The  
12 well is located in Rattlesnake Canyon, which was also referred to as a  
13 small side gulch west of Swanson Gulch, within the SE 1/4 SE 1/4 of  
14 Section 20, Township 28 North, Range 22 East, Willamette Meridian.

15 Application G4-27159 was denied by DOE.

16 VII

17 Feeling aggrieved by these decisions appellant filed appeals PCHB  
18 82-207 through PCHB 82-212 with this Board on December 30, 1982. PCHB  
19 83-27 was filed with this Board on April 4, 1983.

20 VIII

21 Protests were received concerning all 8 of the applications  
22 described above.

23 IX

24 DOE maintains that the water requirement for irrigation,  
25 generally, in the Swanson/Cooper Gulch area is 3.5 acre-feet of water

26 DISSENTING OPINION  
27 PCHB Nos. 82-206, et al.

1 per year per acre irrigated. This requirement can vary according to  
2 the type of crop irrigated. Appellant indicates that 3 acre feet  
3 should be more than adequate to irrigate land above the 2000 foot  
4 elevation.

5 The water requirement for each home served is 1 acre-foot per year.

6 X

7 Cooper Gulch has a total average area of approximately 3,836  
8 acres. The elevation of Cooper Gulch varies from 2,000 feet to 4,720  
9 feet above mean sea level. The estimated long term average incident  
10 precipitation in Cooper Gulch is between 13 and 22.5 inches per year.  
11 DOE maintains that between 85-90 percent of this precipitation will be  
12 lost to runoff or evapo-transpiration. Appellant argues that in  
13 applying its infiltration factor of 10-15% to total precipitation, DOE  
14 gave no consideration to the effect that the 1968 and 1970 forest  
15 fires destroyed most of the forest trees using water in the three  
16 basins and thus reducing the amount of evapo-transpiration.

17 The remaining 10 to 15% of this precipitation percolates  
18 underground and flows at shallow depths atop granitic bedrock.  
19 Somewhere between 50% and 60% of the precipitation which percolates to  
20 the water table can be withdrawn for irrigation because the irrigation  
21 season is only six months of each year. In sum, between 68 and 102  
22 acre-feet of water are physically available for withdrawal on a  
23 sustained, long-term basis, at the site of the well covered by  
24 Application G4-27156.

25 DOE authorized the appellant to withdraw 50 acre feet per year

26 DISSENTING OPINION  
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1 from the well for domestic supply to the appellant's proposed 50  
2 homes, and denied appellant's proposed irrigation of 75 acres.

3 XI

4 Appellant's well which is covered by Application G4-27161 was  
5 developed by a backhoe which apparently tapped a confined aquifer  
6 under sufficient pressure to produce an artesian flow independent of  
7 either the ground water immediately above the bedrock or the surface  
8 under the area. (Testimony of Dan Reaugh.)

9 This application was amended and the final relief sought is for 20  
10 gpm for domestic and irrigation use. DOE authorized withdrawal of 15  
11 gpm for domestic use and denied appellant's proposed irrigation  
12 request.

13 XII

14 Appellant established that significant increased demand for water  
15 for domestic use in Cooper Gulch is highly likely to occur in the near  
16 future.

17 XIII

18 DOE maintains that approximately 213 to 320 acre-feet of water are  
19 available annually for sustained long-term withdrawal in all of Cooper  
20 Gulch, using DOE's logic set forth in Finding IX above. Appellant  
21 argues that approximately 253.40 to 445.67 acre feet are available  
22 annually for withdrawal. DOE maintains that 143.6 acre-feet have been  
23 allocated to existing uses. (Ex. R-12.) Appellant argues that 183.6  
24 acre-feet have been allocated to existing uses. (RRI's post hearing  
25 memo.) Therefore, it would appear that there is anywhere from 69.4 to

1 262.1 acre-feet available for appropriation.

2 XIV

3 Swanson Gulch has a total average area of approximately 2,598  
4 acres. The elevation of Swanson Gulch varies from 1,800 feet to 3,949  
5 feet above mean sea level. The estimated long-term average incident  
6 precipitation in Swanson Gulch is between 13 and 20 inches per year.  
7 DOE maintains only 10 to 15% of this precipitation percolates to the  
8 ground water table and is available for withdrawal. Somewhere between  
9 50 and 60% of the precipitation which percolates to the ground water  
10 table can be withdrawn on a sustained basis.

11 XV

12 Appellant's well (#16) which is covered by Application G4-27160  
13 produces approximately 50 gpm of water. (Ex. A-42; Maddox testimony,  
14 pp. 63 & 64; Ex. R-6.) DOE approved this application for 8 acre-feet  
15 for domestic use as requested by the appellant. The irrigation use  
16 requested was denied on the basis of inadequate production by the well.

17 XVI

18 Appellant presented two proposals to DOE for the development of  
19 domestic uses of water in Swanson Gulch to be served by the wells  
20 covered by Applications G4-27157, G4-27158, G4-27162, and G4-27164.  
21 One proposal was for 17 homesites, the other was for 38 homesites.  
22 (Ex. R-7.) DOE authorized appellant to withdraw 17 acre-feet of water  
23 for development of the smaller proposal presented by Applications  
24 G4-27157, G4-27158, G4-27162, and G4-27164. DOE maintains there is  
25 not sufficient water available for irrigation of 40 to 70 acres as

1 proposed under Applications G4-27157, G4-27158, G4-271652, and  
2 G4-27164.

3 XVII

4 Appellant established that significant increased demand for water  
5 for domestic use in Swanson Gulch is highly likely to occur in the  
6 near future.

7 XVII

8 DOE maintains that approximately 131 to 196 acre-feet of water are  
9 available annually for sustained long-term withdrawal in Swanson  
10 Gulch. Appellant argues that approximately 178.04 to 305.43 acre-feet  
11 is available for withdrawal on a sustained long-term basis in Swanson  
12 Gulch. DOE maintains that 153.5 acre-feet have been allocated to  
13 existing uses. (EX. R-4) Appellant argues that 111.5 acre-feet have  
14 been allocated to existing uses. (RRI's post hearing memo.)  
15 Therefore it would appear that there is either a shortage of 22.5 acre  
16 feet or that anywhere from 42.5 to 193.9 acre-feet is available for  
17 appropriation. Appellant's Applications G4-27157, G4-27158, G4-27160,  
18 G4-27162 and G4-27164 represent allocations of an additional 21  
19 acre-feet.

20 XIX

21 Rattlesnake Canyon has a total average area of approximately  
22 1092.5 acres. The estimated long-term average incident precipitation  
23 in Rattlesnake Canyon is anywhere from 13 to 20 inches per year. DOE  
24 argues that approximately 51.4 to 123 acre-feet of water are  
25 physically available for withdrawal on a sustained, long term basis.

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27 PCHB Nos. 92-206, et al.

1 Appellant argues that approximately 60.8 to 213.5 acre-feet is  
2 available for withdrawal on a sustained, long-term basins, within  
3 Rattlesnake Canyon.

4 Approximately 50% of this sum is not available for irrigation  
5 because irrigation occurs only during 6 months of the year. Therefore  
6 it would appear there is either a shortage of 62.6 acre feet or  
7 anywhere from 9.0 to 125.9 acre feet available for appropriation. DOE  
8 maintains there is not sufficient additional water available to  
9 service appellant's 100 acres of irrigation as proposed and therefore  
10 denied Application G4-27159.

11 XX

12 Any Conclusion of Law which should be deemed a Finding of Fact is  
13 hereby adopted as such.

14 From these Findings of Fact the Board comes to these

15 CONCLUSIONS OF LAW

16 I

17 Applications for permits to withdraw public ground water must be  
18 made in accordance with RCW 90.03.250 through RCW 90.03.340. RCW  
19 90.44.060.

20 II

21 DOE correctly approved the applications listed below in the  
22 amounts listed for domestic use: G4-27156 (150 gpm), G4-27161 (15  
23 gpm), and G4-27160 (50 gpm). Applications G4-27157, G4-27158,  
24 G4-27162, and G4-27164 were also approved for 170 gpm while the  
25 quantity requested by the appellant for domestic use was 220 gpm.

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1 Application G4-27159 was denied.

2 III

3 The Water Code, in RCW 90.03.290, provides that a permit such as  
4 those appellant applied for shall, ". . . if there is water available  
5 for appropriation . . ." There is sufficient water available in  
6 Cooper Gulch and in Swanson Gulch, after the waters already  
7 appropriated are subtracted from the total quantity of water available  
8 for withdrawal, to satisfy appellant's requested appropriations in  
9 their entirety. Appellant's requests for water for irrigation were  
10 incorrectly denied by DOE because water is available for the following  
11 applications: G4-27156, G4-27157, G4-27158, G4-27159, G4-27160,  
12 G4-27161, G4-27162, and G4-27164.

13 IV

14 DOE is permitted to approve applications for permit in less than  
15 the amount of water applied for. See, RCW 90.03.290, which provides,  
16 in part,

17 Any application may be approved for less amount of  
18 water than applied for, if there exists substantial  
reason therefore . . .

19 The Department correctly approved appellant's applications for  
20 domestic use requested. The appellant did establish that considerable  
21 development of domestic uses is likely to occur in Cooper Gulch and  
22 Swanson Gulch in the near future. Domestic uses have a far less  
23 severe impact on a watershed than irrigation uses because much of the  
24 water withdrawn for domestic uses is returned to the watershed through  
25 sewage disposal systems.

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V

The applications should be approved as finally amended by the applicant in their post hearing memo. This would be a total of 590 gpm for domestic use and irrigation; as opposed to DOE's position which was to approve 335 gpm for domestic use only.

VI

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

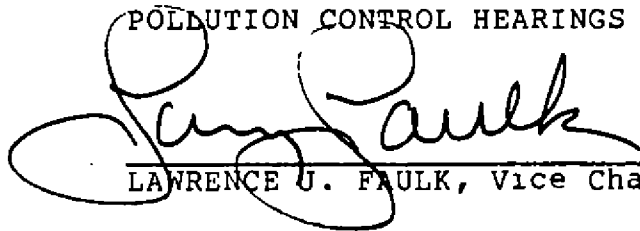
From these Conclusions the Board enters this

ORDER

The Department of Ecology's Orders under Applications G4-27156, G4-27157, G4-27158, G4-27159, G4-27160, G4-27161, G4-27162, and G4-27164 are reversed and the applications are granted as stated in paragraph 1.4 of the appellant's proposed findings of and conclusions of law.

DONE this 13<sup>th</sup> day of June, 1984.

POLLUTION CONTROL HEARINGS BOARD



LAWRENCE U. FAULK, Vice Chairman

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